UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,136	08/20/2003	Hiroaki Takano	KON-1811	6489

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EXAMINER
BRINICH, STEPHEN M

ART UNIT	PAPER NUMBER
2625	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10644136	8/20/03	TAKANO ET AL.	KON-1811

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EXAMINER
Stephen M. Brinich

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2625	20070426

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

	Application No.	Applicant(s)
Office Action Summary	10/644,136	TAKANO ET AL.
	Examiner	Art Unit	
	Stephen M. Brinich	2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-46</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-46</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1.   The following is a quotation of the second paragraph of 35

U.S.C. 112:

> The specification shall conclude with one or more claims particularly
> pointing out and distinctly claiming the subject matter which the applicant
> regards as his invention.

2.   Claims 1-46 are rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point

out and distinctly claim the subject matter which applicant

regards as the invention.

In claim 1, lines 18-19; claim 15, lines 22-23; claim 29,

lines 23-24; and claim 43, lines 23-24, the phrase "the image

data obtained by applying the optimized image processing

conditions" lacks proper antecedent basis (the preceding

recitations describe optimizing conditions of the recited

predetermined image processing, but does not actually recite a

step or means for performing of the recited predetermined image

processing and thus does not provide proper antecedent basis for

the image data resulting from that processing).

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine,
> manufacture, or composition of matter, or any new and useful improvement
> thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

4.   Claims 43-46, insofar as they are understood, are rejected

under 35 U.S.C. 101 because the claimed invention is directed to

non-statutory subject matter. Claims 43-46 drawn to functional

descriptive material NOT claimed as residing on a computer

readable medium. MPEP 2106.IV.B.1(a) (Functional Descriptive

Material) states:

> Data structures not claimed as embodied in a computer-
> readable medium are descriptive material per se and are not
> statutory because they are not capable of causing
> functional change in the computer.
> Such claimed data structures do not define any structural
> or functional interrelationships between the data structure
> and other claimed aspects of the invention which permit the
> data structure's functionality to be realized.

Claims 43-46, while defining a memory medium, does not

define a "computer-readable medium" and is thus non-statutory

for that reason. A "memory medium" can range from paper on which

the program is written, to a program simply contemplated and

memorized by a person. The examiner suggests amending the claim

to embody the program on "computer-readable medium" in order to

make the claim statutory.

In contrast, a claimed computer-readable medium encoded

with the data structure defines structural and functional

interrelationships between the data structure and the
computer software and hardware components which permit the
data structure's functionality to be realized, and is thus
statutory." - MPEP 2106.IV.B.1(a)

Allowable Subject Matter

5.   Claims 1-46, insofar as they are understood, would be
allowable if rewritten or amended to overcome the rejection(s)
under 35 U.S.C. 112, 2nd paragraph, set forth in this Office
action.

6.   The following is a statement of reasons for the indication
of allowable subject matter:

Re claims 1, 15, 29, & 43 (and dependent claims 2-14, 16-
28, 30-42, & 44-46), the art of record does not teach or suggest
the recited arrangement of identifying a type of image capture
device, generating scene-referred image data by normalizing
processing for each type of image capturing device, optimizing
image processing conditions using the scene-referred data, and
subjecting the results to gradation processing to produce a
particular reflection density and gamma value.

Conclusion

7.   The prior art made of record and not relied upon is
considered pertinent to applicant's disclosure.

Naito et al, Terashita, and Sakamoto disclose examples of image gradation, normalization, and gamma processing.

8.   Any inquiry concerning the contents of this communication or earlier communications from the examiner should be directed to Stephen M. Brinich at 571-272-7430.

Any inquiry relating to the status of this application or proceeding or any inquiry of a general nature concerning application processing should be directed to the Tech Center 2600 Customer Service center at 571-272-2600 or to the USPTO Contact Center at 800-786-9199 or 571-272-1000.

The examiner can normally be reached on weekdays 8:00-5:30, alternate Fridays off.

The examiner's unit designation has been changed from "Art Unit 2624" to "Technology Division 2625" (as of March 20, 2006).

If attempts to contact the examiner and the Customer Service Center are unsuccessful, supervisor David Moore can be contacted at 571-272-7437.

Faxes pertaining to this application should be directed to the Tech Center 2600 official fax number, which is 571-273-8300 (as of July 15, 2005).

Hand-carried correspondence may be delivered to the
Customer Service Window, located at the Randolph Building, 401
Dulany Street, Alexandria, VA 22314.

Stephen M Brinich
Examiner
Technology Division 2625

smb
April 27, 2007